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IN THE

Supreme Court of the United States

OCTOBER TERM, A.D. 1961

No. 873

PETER S. SARELAS,

Petitioner,

vs.

JOHN C. GEKAS and CONSTANTINE D. CHAPRALIS; alias Major C. D. Chapralis; and ANDREW CARDARAS; and GEORGE W. ALEXANDER; and THEMIS ANAGNOST; and ATHANASIOS A. PANTELIS, also known as A. A. Pantelis; and WILLIAM J. RUSSIS; and DEMOSTHENES I. GEORGOULIS; and A. THOMAS RANGAVES; and DEMETRIOS PARRY; and SPYROS D. SOTER, also known as S. D. Soter; and EVANGELOS NITTIS, also known as E. Nittis; and CONSTANTINE MAZARAKIS; and GEORGE S. PORIKOS; and EVANGELOS C. DESPOTES; and THEMIS TSAOUSSIS; and ADAMANTIOS ANDROUTSOPOULOS; and GEORGE A. XYDIS; and GEORGE LOURIS,

Respondents.

BRIEF IN BEHALF OF CERTAIN RESPONDENTS IN OPPOSITION TO THE PETITION FOR CERTIORARI.

JOHN C. GEKAS, 77 W. Washington St., Chicago, Illinois, Pro Se and Attorney for Andrew Cardaras; Athanasios A. Pantelis, also known as A. A. Pantelis; Demosthenes I. Georgoulis; Evangelos Nittis, also known as E. Nittis; Constantine Mazarakis; George S. Porikos; Evangelos C. Despotes; Themis Tsaoussis; George A. Xydis and George Louris;

JAMES P. ECONOMOS, One N. LaSalle St., Chicago, Illinois, Attorney for Constantine D. Chapralis, alias Major C. D. Chapralis; George W. Alexander; William J. Russis, A. Thomas Rangaves; Demetrios Parry; Spyros D. Soter, also known as S. D. Soter and Adamantios Androutsopoulos.

Midwest Law Printing Co., - 326 N. Michigan Ave. Chicago
Telephone: Financial 6-3988

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Respondents.

BRIEF IN BEHALF OF CERTAIN RESPONDENTS IN OPPOSITION TO THE PETITION FOR CERTIORARI.

IMPROPER JOINDER OF TWO CASES IN THE PETITION.

The petitioner has improperly joined two cases in his request for separate writs of certiorari, for the cases do not involve identical or closely related questions.

We have filed separate briefs in which the dissimilarity of the cases is shown.

ORDER OF THE SUPREME COURT OF ILLINOIS.

The Supreme Court of Illinois states that they were "of the opinion that said appeal is not well taken" * * * and the same is hence dismissed." * * * and the motion by appellant for reconsideration of order dismissing this appeal be and the same is denied." (Petitioner's Appendix, Exhibits A & B)

The order of the Trial Court, from which the petitioner prayed an appeal to the Supreme Court of Illinois, which is now before this Honorable Court for consideration, appears on pages 122-123 of the Abstract.

JURISDICTION.

(1) We respectfully submit that this Honorable Court should not take jurisdiction of this case for the validity of a Federal Treaty or statute is not drawn in question and there is no Federal constitutional question involved in this case since the validity of a state statute was not drawn in question on the ground of its being repugnant to the Constitution or laws of the United States or, otherwise.

(2) The appeal to the Supreme Court of Illinois was from an interlocutory order and not from a final order (Abst. 122-123), as required by Section 50(2) of Chapter 110 of the Illinois Revised Statutes, 1959.61, and by the Rules 54b and 56d of the Federal Rules of Civil Procedure and by Section 57 of Chapter 110 of the Illinois Revised Statutes, 1961, shown by Exhibits A, B and C and D on pages 1a-4a).

(3) The record was brought to the Supreme Court of Illinois (but not before this Honorable Court), but the ab-

stract of it, certified copy of which is presented to this Honorable Court, shows on its face that both the record and the abstract are defective and do not comply with the requirements of Rules 38 (Exhibit E, page 4a) of the Supreme Court of Illinois, for the abstract omits the certified depositions of the petitioner in which the court found and ruled that he made judicial admissions showing that he has no cause of action.

(4) The petitioner did not comply with the procedural requirements of the Civil Practice Act of Illinois, Chapter 110, Secs. 74 and 75 (Exhibits F and G, pages 6a-9a).

QUESTIONS PRESENTED.

(1) Should a petition for certiorari be granted in which the petitioner requests the granting of two writs of certiorari for two different causes of action that do not involve identical or closely related questions and are totally dissimilar?

(2) Should a petition for certiorari be entertained and granted to review an order of the Trial Court which the Supreme Court of Illinois refused to review and which order shows on its face that it is not final and does not determine the entire cause of action, and which order further shows on its face that the Trial Court did not consider or pass upon any constitutional or federal question?

(2a) Should a petition for certiorari be granted when the petitioner himself asked leave to amend his complaint, which was granted to him, thereby admitting that the court's order is not final, and thereby admitting that by asking and receiving leave to amend his complaint that there was no error in the ruling and that he waived any error in the entry of the order?

STATEMENT OF THE CASE.

The complaint which was stricken alleged that the petitioner was elected by the members of the Hellenic Professional Society of Illinois as its President for the year 1958. That during the course of the annual meeting on October 31, 1958, nineteen defendants, all professional men, eight of whom are members of the Bar of the State of Illinois, conspired to maliciously defame him and commit assault and battery against and upon him, thus attempting to charge in his complaint nine different torts.

The depositions of the petitioner were directed to be taken and the defendants were given extension of time to file their answers or otherwise plead to the complaint until fifteen days after the depositions were completed.

The petitioner made a motion to terminate the depositions. The defendants transcribed the depositions and verified them, and submitted them to the Master, who certified them, and they were filed in Court with the thirty-two exhibits presented during the depositions, with leave of Court (Abst. 82-85). The depositions and exhibits were presented to the court under affidavits of two of the defendants. The court considered them in relation to the entry of the order complained about by the petitioner.

The petitioner filed a motion to suppress the depositions or, in the alternative, that the court not consider them as part of the record, which motion was taken, together with the motions of the defendants to strike the plaintiff's complaint and dismiss his suit, or to enter a judgment on the pleadings, or for a summary judgment.

At no time and nowhere in the pleadings did the petitioner mention or draw in question the validity of any

statute of the State of Illinois or that any such statute was in violation of any Federal statute or of the Federal Constitution.

The order shows that the court did not consider or pass upon any State or Federal constitutional question in the case (Abst. 122-123).

The depositions were not made a part of the record in the petitioner's direct appeal to the Supreme Court of Illinois, nor were they made a part of the exhibits on record before this Honorable Court. The petitioner states in his petition and brief that the constitutional or federal question is stated in the record presented to the Honorable Supreme Court of Illinois, but he did not bring the record before this Honorable Court. We considered it unnecessary to waste the time, effort and expense to file an additional abstract before the Honorable Supreme Court of Illinois. We cannot and we could not present the facts on the merits of the case and argue about them when the record is not before this Honorable Court. It can be seen on pages 82-85 of the Abstract that the petitioner gives only fragmentary abstracting of the exhibits and your Honors can appraise the petitioner's conduct by reading pages 34-35 and 82-85 of his certified abstract of the record. He names the exhibits, but does not give their contents. One of the exhibits is his depositions in which the court found admissions and entered a summary judgment on part of his complaint. As to the rest of his complaint, the court struck it and the petitioner asked leave to file an amended complaint within forty (40) days (Exhibit H, Page 13a) and the order shows his request was granted.

He did not file any amended complaint but preferred to appeal from the Trial Court's order directly to the Supreme Court of Illinois. Notwithstanding those facts,

the petitioner still complains that his constitutional right to a trial by jury was violated.

In his petition he misstates the facts when he states (page 21 of his petition), that constitutional questions were raised and asserted in petitioner's pleadings in the State Trial Court, if by that statement he means to convey the thought that he raised a Federal Constitutional question in his pleadings. That is not the fact. Only in two places he complains that he was denied "due process" (but he is not definite as to whether it is a Federal due process or State law due process that he was denied), and that appears on page 16 of his abstract where he says that the defendants made long defamatory statements and insisted that they appear in the record "knowing that such conduct violates the provisions of Rule 19 of the Supreme Court of Illinois and the constitutional guarantees of due process", and on page 21 he states: "which said malconduct of the defendants violates plaintiff's constitutional guarantees of due process and the provisions of Rule 19 of the Supreme Court relating to discovery depositions." We failed to find any other statement in his abstract which draws any question in violation of any Federal statute or the Federal Constitution.

ARGUMENT.

The order appealed from is not a final order, for the court did not dismiss the entire suit and did not order that the plaintiff go hence without day and take nothing by this suit, or words of similar effect. The court granted the plaintiff's Motion for Leave to Amend his complaint.

In our motion before the Honorable Supreme Court of Illinois to dismiss the plaintiff's appeal, the affidavit of John C. Gekas was attached, in which the petitioner is quoted to have said to the court: "May we ask leave to file an amended complaint within forty days, your Honor? * * *" The Court, "Now I am going to give you leave. If you want to file an amended complaint in forty days you will have the right to do that. Then they have the right to make any motions they may desire, but let's not cross that bridge until we get to it." "Now do you want to stand on the record or do you want to file an amendment?" Sarelas: "I want to file an amended complaint. * * * Under Section 50 we cannot appeal." The Court: "I know you can't unless I give you permission to do it."

His argument in his petition could not now be tenable. The court found that he admitted that there was no assault and battery committed upon him.

Although the order provided "in respect to that part of the complaint", that is, concerning the assault and battery, "that the plaintiff go hence without day and take nothing by this suit", he still argues that the order is a final order determining the entire suit. The statute of Illinois concerning summary judgment is the same as Rules 54(b) and 56(d) of the Federal Civil Practice Rules. Exhibits A, B, C and D and the Illinois and Federal Courts considered

the statutes and the rules to be similar. The petitioner is well acquainted with the statute and the rules. We are at a loss to understand why the petitioner is still prosecuting this suit to reverse the decision of the trial court. His petition is frivolous. The court may appraise his petition and conduct by reading pages 34-35 of his certified abstract. Not one of the cases cited by him is in point.

We respectfully submit the following cases cited in the notes are in point. (Footnotes 1, 2 and 3)

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(1) Sec. 50(2), Chap. 110, Ill. Rev. St. 1959-61, Rule 54(b) and 56(d) of the Federal Rules of Civil Procedure.

Ariola v. *Nigro*, 13 Ill. (2) 200; 148 N.E. (2) 787;
Cannon v. *Thomson*, 28 Ill. App. (2) 69; 170 N.E. (2) 174.

(2) No appeal can be taken from a partial summary judgment without the express finding by the Trial Court that there is no just reason for delaying the enforcement of the judgment or the appeal.

Garbose v. *George A. Giles Co., et al.*, 183 Fed. (2) 513;
Dyer v. *McDougel*, 201 Fed. (2) 265;
Wynn v. *Reconstruction Finance Corp., et al.*, 212 Fed. (2) 953;
Borges v. *Art Steel Co., Inc.*, 243 Fed. (2) 350;
Leonard v. *Socony-Vacuum Oil Co.*, 130 Fed. (2) 535.

(3) The rule was the same under the old practice.

Clark v. *Kansas City*, 172 U.S. 334;
Missouri K. & T. Ry. Co. v. *Olathe*, 222 U.S. 185;
Meagher v. *Minnesota Thresher Mfg. Co.*, 145 U.S. 608, 610-611;
Gill v. *West End Pine Apartments, Inc., et al.*, 339 Ill. App. 513; 90 N.E. (2) 280 (First District No. 44813);
Dodd & Edmunds, Ill. App. Prac. Sec. 813, Page 557;
Florence Huntoon v. *Dr. J. E. Pritchard*, 295 Ill. App. 10, 13;
Retail Merchants Assn. Mut. Fire Ins. Co. of Illinois v. *Fred W. Cox*, 138 Ill. App. 14, 21;

The petitioner makes much of his complaint and quotes at length from it, and speaks of the procedural history in relation to it. He overlooks the fact, however, that he stands before the court without a complaint. His complaint was stricken and in theory of the law it is non-existent, and everything that related to the part of the complaint that was stricken falls with it. All his quotations from the interlocutory pleadings likewise fall by the wayside. His judicial admissions are most conclusive against him. He accepted the court's decision and asked leave to amend, and, having obtained that leave to amend within forty days, and having not filed an amendment, he also stands in default before the court. By his conduct and his acts the petitioner confessed that he has no cause of action, especially after he made the judicial admissions which the court found sufficient to hold that there was no assault and battery committed upon him. The cases sustain our contention (Footnote 3)

The petitioner again fails to comply with the elemental requirements necessary to support his petition for certiorari. He fails to bring up a proper transcript of the record that would present the case to this Honorable Court and the grounds upon which he seeks the writ. He failed to bring before the Honorable Supreme Court of Illinois and before this Honorable Court his depositions. Therein the court found judicial admissions and decided that he had no case, and here, he argues from the depositions that the de-

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(3) *Continued*

K & L Security v. *Hibernian Baking Assn.*, 137 Ill. App. 175 (180);

Rose B. Bennett v. *Union Central Life Ins. Co.*, 203 Ill. 439 at page 444;

Esther F. Falkenau v. *Dr. N. J. Smedley*, 200 Ill. App. 6.

fendants were wrong and the court was in error in allowing the depositions to be filed as an exhibit, and in considering them. How can it be possible for your Honors to consider his argument when you do not have before you that subject-matter about which he complains? He adds to this failure a most defective abstracting of the exhibits that were admitted or presented at the time of the taking of his depositions. The exhibits which he lists in his abstract were filed by order of court, together with the depositions, which also were described as an exhibit. If the depositions were improper, defective or untrue and the court was in error in considering them, or that his admissions therein contained were not made by him, then the best way that he could prove those facts is by bringing the depositions before this Honorable Court. Assuming that his depositions were brought before this Honorable Court, he still must overcome the obstacle that the order from which he seeks to take an appeal is not final, but partial, and interlocutory. Again the authorities sustain us. (Footnote 4)

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(4) In *Matson v. Holliday*, 25 Ill. App. (2) 90; 165 N.E. (2) 718, the syllabus states:

"The record filed in Reviewing Court must present fairly and intelligently the substance of those portions of the record on which error is assigned, and it is not the duty of successful litigant to supply deficiencies in the record."

Harris, et al. v. Frank Annunzio, Director of Labor, et al., 411 Ill. 124 at page 126; 103 N.E. (2) 477.

At page 126 it is stated:

"* * * Rule 38 of this court, (Ill. Rev. Stat. 1949, Chap. 110, par. 259.38), requires the party prosecuting an appeal in this court to furnish a complete abstract of the

The petitioner is precluded from argument or presentation of any statement contained in his stricken complaint. By asking leave to amend he admitted that he had no cause of action or reason to complain. The modern civil procedure and the cases cited expressly establish the rule that his depositions can be used in a motion for summary judgment. His depositions were taken under oath. The depositions were transcribed and verified by the court reporter and were certified by the Master, and they were presented as exhibits by verified petition of the defendants. The trial judge read his depositions and found conclusively that the petitioner had no cause of action based on assault and battery. He made no explanation that he made some mistake in his testimony. He is, therefore, conclusively bound

(c) *Continued*

record. Such abstract must be sufficient to present fully every error relied upon for reversal. In *Department of Finance* v. *Sheldon*, 381 Ill. 256, we held that the substance of the record should be abstracted so that it would not be necessary for the court to resort to the record to determine the issues presented; that everything necessary to decide the questions raised on appeal must appear in the abstract; and that failure of the abstract to properly present the errors relied upon would warrant the court in affirming the judgment. In *Hayes* v. *Industrial Com.*, 383 Ill. 272, we reviewed at some length previous decisions of this court concerning the application of the rule, and concluded that, where the abstract does not show any judgment entered by the trial court, the failure of the party bringing a case to this court to furnish a proper record and to properly abstract the same, so as to fully present the errors relied upon, was ground for affirmance."

by his judicial admissions made under oath and the following authorities sustain us. (Footnote 5)

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(5) *Clifton, et al.* v. *Tomb*, 21 Fed. (2d) 893, at page 902:

"* * * It has been held that the sworn testimony of a party who had control of his case, with power to bind himself conclusively by pleadings, stipulations, or admissions as to facts, resting upon his own knowledge, is of such a solemn character that, in the absence of a clear showing of mistake, inadvertence, or oversight, it should ordinarily be regarded as precluding him from establishing an inconsistent state of facts. *Smith* v. *Boston El. Ry. Co.*, (C.C.A. 1st) 184 F. 387, 37 L.R.A. (N.S.) 429. See also, *Pope* v. *Allis*, 115 U.S. 363, 6 S. Ct. 69, 29 L. Ed. 393; *National Steamship Co.* v. *Tugman*, 143 U.S. 28, 12 S. Ct. 361, 36 L. Ed. 63."

Ness v. *Bilbob Inn, Inc.*, 15 Ill. App. 2d 340, 346-347:

"* * * It is evident that such statements are admissions and that under the rules of the Supreme Court admissions made in discovery depositions may be used in the trial of the case, and could be used in a motion for a summary judgment.

The affidavit made by Mr. Dennen was an affidavit that he had attended the taking of the deposition and that the plaintiff had made certain admissions at that hearing, and the making of the admissions were things of which Mr. Dennen had personal knowledge. It is evident that although the deposition was not formally correct, in that it had not been certified to by the taking officer, nor had it been signed by the maker of the deposition nor had a copy been furnished to the attorney for the plaintiff, still it shows that the plaintiff was sworn and made certain answers and it therefore either corroborates or contradicts the affidavit of Mr. Dennen."

Meier v. *Pocius*, 17 Ill. App. (2d) 332, 335;

State Farm Mutual Insurance Co. v. *Bonacci*, 111 Fed. (2) 412, 419;

General Insurance Co. v. *Hughes*, 249 S.W. (2) 231, 234;

Slowlind Oil & Gas Co. v. *State*, 145 S.W. (2) 569, 570.

There is no Federal statute or the validity of any State statute as being repugnant to the Federal laws or the Constitution drawn in question. Under Sec. 75 of Chapter 110 of the Illinois Revised Statutes the Supreme Court of Illinois did not and could not take jurisdiction of this case for there was no constitutional question involved. Its dismissal of the appeal merely on the motion of the appellees does not mean, as the petitioner claims, that the Supreme Court of Illinois rendered an opinion on the matter of its jurisdiction over this case. The decisions of the Supreme Court of Illinois hold that, in order to take jurisdiction of a case like the one before this Honorable Court, it must be shown affirmatively in the record of the case that there is a fairly debatable constitutional question involved; that the constitutional question was raised and presented for consideration of the trial court; and it is not sufficient to make charges of unconstitutionality in an argument or in a brief; it must be raised in good faith and not pretended in order to give the Supreme Court jurisdiction; the record must affirmatively show that the question was presented to the trial court and the court passed on the question and entered an order therein and preserved its decision in the record for review, and the ruling thereon must be assigned as error. The judgment of the court must be based upon the constitutional question and not upon any other issue, even if it were raised and presented for consideration by the trial court.

The petitioner did not attack the constitutionality of the Civil Practice Act of Illinois concerning motions to dismiss his suit for the reason that he does not state a cause of action, and he did not attack the constitutionality of the Civil Practice Act authorizing the court to strike his complaint or to enter an order and dismiss his suit on the pleadings, or to enter a summary judgment. The petitioner merely

complained that the provisions of the Civil Practice Act were not properly applied to his claims. The only question presented was a question of law as to whether the petitioner's pleadings stated a cause of action, and as to whether there was a disputed question of fact or a genuine issue of fact for the jury to pass upon. The trial court found that by the petitioner's judicial admissions there was no genuine issue of fact in the case. In addition, the record must show that the question of the validity of the statute was presented to the court in order to give the Supreme Court jurisdiction on that ground. The cases in the note sustain our contention. (Footnote 6)

The decisions of this Honorable Court approved the law of the State of Illinois as stated by the statutes and the decisions of its Supreme Court, and therefore, since the petitioner did not comply with the jurisdictional and procedural requirements of the State of Illinois, he waived his right to raise either a State or a Federal constitutional question, and is not entitled to a writ of certiorari. (*Central Union Co. v. Edwardsville*, 269 U.S. 190, 194-5; *Pennsylvania Railroad Co. v. Illinois Brick Co.*, 297 U.S. 447, 462-5; *Parker v. Illinois*, 333 U.S. 571, 574-5; *Edelman v. Cali-*

(6) *Wilson* v. *Prochnow*, 354 Ill. 98; 187 N.E. 914;
People v. *Schmidt*, 413 Ill. 80; 107 N.E. (2) 842;
Dean v. *Northern Trust Co.*, 259 Ill. 148; 102 N.E. 244;
Ryan v. *City of Chicago*, 363 Ill. 607; 2 N.E. (2) 913;
Kellogg v. *Kellogg*, 371 Ill. 241; 20 N.E. (2) 585;
City of Watseka v. *Wilson*, 11 Ill. 2d 265; 142 N.E. (2) 34;
The Village of Lansing v. *Hacker*, 7 Ill. 2d 258; 130 N.E. (2) 265;
Leffler v. *Browning*, 14 Ill. 2d 225; 151 N.E. (2) 342;
Terren v. *City of Chicago*, 413 Ill. 141; 108 N.E. (2) 476.

fornia, 344 U.S. 357, 358-9; *Hulbert* v. *City of Chicago*, 202 U.S. 275-277).

The power of the Supreme Court of the United States has over judgments of the state court is to correct them to the extent they incorrectly adjudge Federal rights (*Herb* v. *Pitcairn*, 324 U.S. 117, 125-126).

It must appear affirmatively from the record that a Federal question was presented to the court to which the writ is requested to be directed; that its decision of the Federal question was necessary to the determination of the case and that the Federal question was actually decided or that the judgment rendered could not have been rendered without deciding the Federal question. (*Southwestern Bell Tel. Co.* v. *Oklahoma*, 303 U.S. 206). The Federal question must affirmatively appear in the record and it cannot be deduced by inference. (*Orient State Co.* v. *Butler Co.*, 166 U.S. 648, 655; *Thomas* v. *State of Iowa*, 209 U.S. 258).

When the judgment of the court of the State of Illinois rests on a ground sufficient to sustain its decision other than on the ground of a violation of any Federal right, the Supreme Court of the United States will not take jurisdiction. (*Radio Station WOW, Inc.* v. *Johnson*, 326 U.S. 120). It appearing that the Honorable Supreme Court of Illinois did not deliver an opinion and since the dismissal of the appeal rests fully upon non Federal ground, this Honorable Court does not take jurisdiction to review the order of dismissal of the trial court. (*Stembridge* v. *Georgia*, 343 U.S. 541; *Chicago* v. *Willett Co.*, 344 U.S. 912; *Lottas* v. *Illinois*, 334 U.S. 804).

The construction of the State statute by a State court is binding and its decision is not reviewable by the Supreme Court of the United States. (*Gharanda Trust Co.* v. *Bland*, 287 U.S. 509, 513; *Bowe* v. *Scott*, 233 U.S. 658, 665).

When the opinion of a State court does not mention anything about the validity of any statute as being repugnant to Federal law and the case was disposed of totally on an independent ground, this Honorable Court does not take jurisdiction. (*New York Central* v. *New York*, 186 U.S. 269).

It must be clear that a Federal question appears in the record. If the decision is based upon two grounds, one of which is based upon the State law, and it is fully sufficient to sustain the decision, this Honorable Court does not take jurisdiction. The same rule applies where, as in this case, the State court did not render an opinion. (*Lynch* v. *New York*, 293 U.S. 52, 54-55; *Herb* v. *Pitcairn*, 324 U.S. 117, 125-126; *Bosca College* v. *Kentucky*, 211 U.S. 45; *Fox Film Corp.* v. *Mueller*, 296 U.S. 207, 210).

The ruling of the State court on questions of pleading will not be reviewed by the United States Supreme Court. (*Brinkmeier* v. *Missouri Pacific R.R. Co.*, 224 U.S. 268).

The question must be a substantial one and not frivolous. (*Equitable Life Assurance Society* v. *Brown*, 187 U.S. 308, 311; *Penn. R.R. Co.* v. *Illinois Brick Co.*, 297 U.S. 447, 462).

A challenge to the validity of a State statute first made in the brief filed in the highest court of the state and certified to the Supreme Court of the United States could not be valid when presented for the first time in the Appellate Court. (*Memphis Natural Gas Co.* v. *Beeler*, 315 U.S. 649 651; 86 L. Ed. 1090, 1094; 62 Sup. Ct. 857; *Jett Bros. Distilling Co.* v. *City of Carrollton*, 252 U.S. 1, 5-6; 64 L. Ed. 421; *Stadelman* v. *Miner et al.* 246 U.S. 544, 38 Sup. Ct. 359; *French* v. *Fowler*, 199 U.S. 274; 26 Sup. Ct. 76).

CONCLUSION.

For the reasons above stated, we respectfully request that the petition for a writ of certiorari be denied.

Respectfully submitted.

JOHN C. GEKAS, 77 W. Washington St., Chicago, Illinois, Pro Se and Attorney for Andrew Cardaras; Athanasios A. Pantelis; also known as A. A. Pantelis; Demosthenes I. Georgoulis; Evangelos Nittis, also known as E. Nittis; Constantine Mazarakis; George S. Porikos; Evangelos C. Despotes; Themis Tsaoussis; George A. Xydis and George Louris;

JAMES P. ECONOMOS, One N. LaSalle St., Chicago, Illinois, Attorney for Constantine D. Chapralis, alias Major C. D. Chapralis; George W. Alexander; William J. Russis; A. Thomas Rangaves; Demetrios Parry; Spyros D. Soter, also known as S. D. Soter and Adamantios Androutsopoulos;

APPENDIX.

EXHIBIT A

Federal Rules of Civil Procedure.

VII. Judgment.

"Rule 54. Judgments; costs.

. . . . .

(b) Judgment upon multiple claims. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, the court may direct the entry of a final judgment upon one or more but less than all of the claims only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates less than all the claims shall not terminate the action as to any of the claims, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims."

EXHIBIT B

Federal Rules of Civil Procedure.

"Rule 56. Summary Judgment.

. . . . .

(d) Case not fully adjudicated on motion. If on motion under this rule judgment is not rendered upon the whole

case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order, specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly."

EXHIBIT C

Illinois Revised Statutes, 1959-1961,
Chapter 110, Section 57.

Summary Judgments and Decrees.

(1) For plaintiff. Any time after the opposite party has appeared or after the time within which he is required to appear has expired, a plaintiff may move with or without supporting affidavits for a summary judgment or decree in his favor for all or any part of the relief sought.

(2) For defendant. A defendant may, at any time, move with or without supporting affidavits for a summary judgment or decree in his favor as to all or any part of the relief sought against him.

(3) Procedure. The opposite party may prior to or at the time of the hearing on the motion file counteraffi-

davits. The judgment or decree sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment or decree as a matter of law. A summary judgment or decree, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(4) Form of affidavits. The form and contents of and procedure relating to affidavits under this section shall be as provided by rule.

(5) Affidavits made in bad faith. If it appears to the satisfaction of the court at any time that any affidavit presented pursuant to this section is presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing it to pay to the other party the amount of the reasonable expenses which the filing of the affidavit caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt. As amended by act approved July 19, 1955. L. 1955, p. 2238

EXHIBIT D

Illinois Revised Statutes, Chapter 110, Section 50.

* * * * *

"(2) If multiple parties or multiple claims for relief are involved in an action, the court may enter a final order,

judgment or decree as to one or more but fewer than all of the parties or claims only upon an express finding that there is no just reason for delaying enforcement or appeal. In the absence of that finding, any order, judgment or decree which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not terminate the action, is not enforceable or appealable, and is subject to revision at any time before the entry of an order, judgment, or decree adjudicating all the claims, rights and liabilities of all the parties."

EXHIBIT E

Illinois Revised Statutes, Chapter 110, Section 74.

"Method of Review.

(1) Every order, determination, decision, judgment or decree reviewable by the Supreme or Appellate Court of this State is subject to review by notice of appeal. The review shall be designated an appeal and constitutes a continuation of the proceeding in the trial court. The appeal presents to the reviewing court all issues which heretofore have been presented by appeal and writ of error. The right heretofore possessed by any person not a party to the record to review a judgment or decree by writ of error is preserved by notice of appeal.

(2) All distinctions between the common law record, the bill of exceptions and the certificate of evidence, for the purpose of determining what is properly before the reviewing court, are abolished. The trial court record shall include every writ, pleading, motion, order, affidavit, and

other documents filed or entered in the cause and, in addition, all matters before the trial court which are certified as a part of the record by the judge thereof. All matters in the trial court record actually before the court on appeal may be considered by the court for all purposes, but if not properly authenticated the court may order further authentication.

(3) Every order, determination, decision, judgment or decree of the Appellate Court heretofore reviewable by the Supreme Court by writ of error shall hereafter be reviewable only by appeal. The appeal shall be perfected by notice of appeal filed with the clerk of the Appellate Court within 40 days after the order, determination, decision, judgment or decree of the Appellate Court becomes final, either through denial of a petition for a rehearing or the expiration of the time within which a petition for rehearing might have been filed. The form and contents of notice of appeal shall be, as near as may be, as provided by rule of the Supreme Court for notice of appeal in the case of an appeal from a trial court. No step in the perfection of the appeal other than the filing of the notice of appeal is jurisdictional. The appeal may be taken by any person heretofore entitled to sue out a writ of error. It presents to the Supreme Court all issues heretofore presented by writ of error, and constitutes a continuation of the proceeding in the Appellate Court. All steps subsequent to the filing of the notice of appeal shall be as provided by rule. As amended by act approved July 19, 1955, L. 1955, p. 2238."

(Appendix)

EXHIBIT F

Illinois Revised Statutes, Chapter 110, Section 75.

"Jurisdiction of Appellate and Supreme Courts.

(1) Appeals shall be taken directly to the Supreme Court (a) in all cases in which a franchise or freehold or the validity of a statute or a construction of the constitution is involved, (b) in all cases relating to revenue, or in which the State is interested as a party or otherwise and (c) in cases in which the validity of a municipal ordinance or county zoning ordinance or resolution is involved and in which the trial judge certifies that in his opinion the public interest so requires.

(2) In all cases in which their jurisdiction is invoked pursuant to law, except those wherein appeals are specifically required by the constitution of the State to be allowed from the Appellate Courts to the Supreme Court, the judgments or decrees of the Appellate Courts shall be final, subject however, to the following exceptions: (a) in case a majority of the judges of the Appellate Court or of any branch thereof shall be of the opinion that a case decided by them involves a question of such importance, either on account of principal or collateral interest, as that it should be passed upon by the Supreme Court, they may in such case grant leave to appeal to the Supreme Court on petition of parties to the cause, in which case the said Appellate Court shall certify to the Supreme Court the grounds of granting said appeal. (b) In any such case as is hereinbefore made final in the Appellate Courts it is competent for the Supreme Court to grant leave to appeal

for its review and determination with the same power and authority in the case, and with like effect, as if it had been carried by appeal to the Supreme Court. [sic] In any case heard and determined in the trial court upon actual trial in which the Appellate Court upon appeal from the final judgment or decree entered in the cause in the trial court reverses the judgment or decree and remands the cause for a new trial or hearing, and in which the party in whose favor the trial court's judgment or decree was rendered presents to and files with the Appellate Court an affidavit stating that he will be unable on a future trial or hearing to adduce other or additional evidence, facts, or circumstances that were adduced in the trial court and expressly waiving the right to a new trial or hearing and consenting and requesting that the portion of the judgment of the Appellate Court remanding the cause for new trial or hearing be deleted and stricken from the judgment of the Appellate Court, then that court upon motion shall amend its judgment by striking out the portion thereof remanding the cause for new trial or hearing. Thereupon it is competent for the Supreme Court to grant leave to appeal from such final judgment of reversal for its review and determination with the same power and authority in the case, and with like effect, as in other cases in which leave to appeal from the final judgments of the Appellate Courts is authorized in this section.

Provided, however, that application under this Act to the Supreme Court to cause it to grant leave to appeal for its review and determination shall be made within 40 days after the judgment of the Appellate Court has become final, either through the denial of a petition for rehearing or the expiration of the time within which a petition

for rehearing might be filed; otherwise the power of the Supreme Court to review the judgment and decree of the Appellate Court shall cease to exist. Answers to such petitions for leave to appeal may be filed by respondent within 15 days after the expiration of the time for the filing of the petition for leave to appeal or within such further time as the Supreme Court or some Justice thereof in vacation may grant, if granting within such 15-day period. As amended by act approved July 21, 1959. L. 1959, p. 1784."

EXHIBIT G

Illinois Supreme Court Rule 38.

"Abstracts. The party prosecuting an appeal in this court or an Appellate Court shall furnish an abstract of the record on appeal, referring to the pages of the record by numerals on the margin. If the record contains the evidence it shall be condensed in narrative form so as to present clearly and concisely its substance. The abstract shall be preceded by a complete index, alphabetically arranged, indicating the nature of each exhibit, i.e., Will, Trust Deed, Contract, and the like, and the page on which it may be found, and giving the names of the witnesses and the pages of the direct, cross and redirect examination. In cases brought from an Appellate Court the abstract filed in that court may be filed in this court by changing the cover and including an abstract of the record of the Appellate Court with an index thereto. The abstract need only be sufficient to present fully every error relied upon. Matters in the record on appeal not necessary for a full under-

standing of the questions presented for decision shall not be abstracted. Upon motion and good cause shown after the filing of the record on appeal, the court or a judge thereof in vacation may dispense with the furnishing of an abstract or with the abstracting of matters in the record even though they are to be considered on appeal. The abstract will be taken to be accurate and sufficient unless the opposing party files an additional abstract, making necessary corrections or additions. The additional abstract may be filed without order of court."

EXHIBIT H

No. 36815

In The

SUPREME COURT OF ILLINOIS

PETER S. SARELAS, Plaintiff-Appellant, vs. JOHN C. GEKAS, et al., Defendants-Appellees.	Appeal from Circuit Court Cook County. Honorable John J. Lupe, Judge Presiding.

State of Illinois
County of Cook—ss:

AFFIDAVIT.

John C. Gekas, being first duly sworn on oath, deposes and says that he is one of the Defendants in the above entitled cause and he appears herein Pro Se and as Of Counsel,

(Appendix)

Affiant further states that he believes that the above and foregoing Motion, Suggestion, Points therein raised and Propositions therein stated are well taken and that he and his co-Defendants do not present them for the purpose of delay.

Affiant further states that the Honorable Judge John J. Lupe, when he rendered his oral opinion, the Plaintiff who appeared Pro Se and the Honorable Judge stated in part as follows (the quotations are copied from the verified transcript of the Court Reporter, Thomas E. Lief):

"Plaintiff moved the Court to not consider the evidence taken in the discovery deposition which is now being used in defendant's motion for summary judgment, and the plaintiff alleges that the rules of the Supreme Court had not been complied with, the manner in which the depositions were taken, and what took place at the time of the taking of said deposition.

"The Court, after a careful consideration of the law and the able arguments of respective counsel heretofore presented, is of the opinion that any admissions in said depositions or any testimony that could throw light upon the question of whether or not an assault had been committed should be considered by the Court and the same has been so considered, and the motion of the plaintiff in that regard is denied.

"Discovery depositions may be used for the purpose of impeaching the testimony of a witness or any admission made by either of the parties to the lawsuits and may be used in a motion for summary judgment.

"It is fundamental that any admissions or statements that have been made by the opposing party in the deposition could be used in a motion for summary

judgment are admissible on the hearing of a motion for summary judgment in the case.

"In the case of *Ness v. Billboldt Inn, Inc.*, 15 Ill. Appellate, Section 340, it was held that even in depositions that were not completed, admissions contained therein could be used on motion for summary judgment.

"After carefully reading the long depositions and various pleadings in connection therewith, the Court is satisfied that there was no assault as contemplated by law, nor was there a battery committed by the defendants or either of them against the plaintiff."

. . . . .

"Therefore, on said motion for summary judgment with reference to the assault and battery, the same will be sustained and the finding will be in favor of the defendants on said issue.

"Now, gentlemen, you may draw an order in this case. I don't want to give you the right to be heard in the matter. I don't want you to. I don't want to appear to be offensive to anybody. I just got a job here as a judge, and I'm called upon to decide these matters, and I must decide them in the light as I see them. I'm terribly sorry in this case, that men such as all you gentlemen in such high standards of professional law, that this matter had occurred. I don't think it reflects a great deal of credit upon and dignity upon the Bar in this county. These kinds of suits are not wholesome in their nature, and I think that we should all be careful about it for the protection of the manner in throwing around members of our Bar. You may draw an order, gentlemen, sustaining defendants' motion to strike the complaint, the same being insufficient in law

for the reasons hereinabove given with the exception of the allegations with reference to assault, and as to that charge, the Court will enter an order in favor of the defendants allowing said motion for summary judgment.

"The plaintiff, if he desires, it is entirely up to him now, he can stand on his record in this case, and the pleadings and the deposition, and all, or if he desires, it is to the motions to strike the allegations all except the one that the Court has ruled upon, about the question of assault, if he desires, he may have a right, it's up to him, whether or not he desires to file an amended complaint not on your motion to strike, the allegations of the complaint that I hold are insufficient in law for him to file his suit. As to the question of summary judgment, that will be absolutely sustained on the allegation of assault in this case.

"See, he alleges in this case, as to that question of assault, he says in his complaint he was assaulted by the defendants. Then, when he makes a proper allegation on score, there must be an answer, or a motion for summary judgement or a motion to strike. I hold his allegations with reference to assault are sufficient. I hold his allegation with reference to all other allegations are insufficient on a motion to strike, and my finding will be accordingly. The motion will be sustained to strike all allegations or the cause with reference to the cause that he attempts to allege with the exception of assault, but allegation of assault, the motion to strike that will be denied. But the motion for summary judgment from the readings of the record in this case shows there was no assault as contem-

plated by the statute; therefore, you are entitled to a summary judgment on that, there being no question of action for a jury to pass upon that particular point. You will draw your order accordingly."

* * * * *

"Mr. Sarelas: May we ask leave to file an amended complaint within 40 days, Your Honor?"

* * * * *

"The Court: Now, I'm going to give you leave, if you want to file an amended complaint in 40 days, you'll have a right to do that. Then they have a right to make any motions they may desire, but let's cross —not cross the bridge until we get to it.

"Now, do you want to stand on the record, or do you want to file an amendment?

"Mr Sarelas. I want to file an amended complaint.

"The Court: All right. Now, in your amended complaint, Counsel, don't allege the question of assault because I've ruled on it. If they m[illegible] a motion to strike that, I'll sustain it, because it's been adjudicated. But as to the question of defamation and all those other matters that the Court has ruled upon, you have a perfect right to file an amended complaint, and then they have a right to make any motions that they desire, whatever it may be, and if and when the time comes, I'll rule upon that.

"Mr. Sarelas: Under Section 50, Your Honor, we cannot appeal.

"The Court: I know you can't, unless I give you permission to do it."

(Appendix)

Affiant further states that the Honorable Trial Court entered an Order, appearing on Page 122 to 123 of the Abstract, from which the Plaintiff appealed.

Affiant further states that the Plaintiff has not, up to this time, filed any amended complaint or has not requested any extension of time to file any amended complaint and that there was no stipulation or agreement by and between the Plaintiff and the Defendants to give him any extension of time whatsoever; that the Plaintiff, instead of complying with the Order of the Trial Court to file his amended complaint within forty days, on the forty-first day filed his notice of appeal (Abst. 123-125).

Affiant further states that the record filed by the Plaintiff herein does not include the depositions and the exhibits introduced in the depositions; that the contents of the said depositions were pertinent, relevant and material and that they were considered as such by the Trial Court in rendering its opinion as is shown by the Order of Court (Abst. 122-123).

Affiant further states that the Plaintiff is maliciously prosecuting six law-suits against this affiant, three of them now before this Honorable Court, one before the Appellate Court and one before the Circuit Court and one in the Superior Court of Cook County, all of them without any foundation and all of them without any cause of action against this affiant; that in defending against all those law suits it requires a great deal of time and attention and that, therefore, your affiant asks this Honorable Court for an extension of time for a period of sixty (60) days in which to prepare any additional abstracts or briefs that might be necessary in the event this Honorable Court

denies the Motion of the Defendants to dismiss this appeal or remand it to the Trial Court.

Affiant further sayeth not.

/s/ John C. Gekas

Subscribed and sworn to before me
this 4th day of January, 1962.

Signature and Seal of Notary Public